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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,546	12/02/2004	Han Leng Paxton Tan	SG02 0011 US	5711
65913	7550	10/06/2009		
NXP, B.V. NXP INTELLECTUAL PROPERTY & LICENSING M/S41-SJ 1109 MCKAY DRIVE SAN JOSE, CA 95131			EXAMINER HU, RUI MENG	
			ART UNIT 2618	PAPER NUMBER
			NOTIFICATION DATE 10/06/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ip.department.us@nxp.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/516,546

Applicant(s)

TAN, HAN LENG PAXTON

Examiner

RuiMeng Hu

Art Unit

2618

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on 09/08/2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Lana N. Le/
Primary Examiner, Art Unit 2614

Continuation of 11, does NOT place the application in condition for allowance because:

Applicant argued none of the asserted references teaches the claimed invention "as a whole" (§ 103(a)) including aspects regarding, e.g., checking, a predetermined number of times, whether a FM signal has both a signal strength greater than a FM threshold and is in an automatic frequency control (AFC) window and then incrementing a count, none of the cited references teach a testing process that involves checking that the FM signal has the desired signal strength, then checking that the FM signal is in the AFC window if the signal strength test is met, then incrementing the count if the AFC window test is met, and then repeating the testing steps a predetermined number of times, as in the claimed invention. Moreover, the Examiner fails to provide adequate motivation for combining the '105 and '666 references. In this instance, the Examiner's proposed combination does not involve simply combining teachings in which the cited references are not modified in their operation as was addressed in KSR. See KSR Int'l Co. v. Teleflex, Inc., 127 S. Ct. 1727 (2007). Instead, the '105 and '666 references are directed to receiving and processing different types of signals (analog versus digital) and, as such, the relied upon teaching of the '666 reference cannot simply be applied to the '105 reference as asserted by the Examiner. Thus, the proposed combination would involve modifying the teaching of the '666 reference in some undisclosed manner that has not been addressed by the Examiner. Accordingly, the Examiner's assertion of some vague "articulated reasoning" in support of the modification (e.g., "for better assurance") is insufficient. KSR and M.P.E.P. § 2141 make it clear that such assertions are inapplicable where the operation of one of the references is modified. For example, according to M.P.E.P. § 2141, Applicant can rebut such assertions of obviousness simply by showing that "the elements in combination do not merely perform the function that each element performs separately." This is also consistent with various parts of KSR, which repeatedly refer to combined teachings in which the cited references are not modified in their operation. As such, in the context of KSR, the asserted combination "as a whole" is entirely unpredictable based on the asserted teachings of the '105 and '666 references.

The Examiner respectfully submits that determining a wirelessly received FM signal to be valid by meeting RSSI and AFC criteria is well known in the art as disclosed by Kennedy et al. figure 3. In the same field of wireless communication, Tanaka et al. disclose a RF signal quality determination circuit, wherein RSSI of a received RF signal is continuously measured a predetermined M times, and the received signal is qualified in RSSI Estimation stage only if the criterion RSSI is met a majority of the times (column 3 line 63-column 4 line 12, figure 2, the test is repeated M (a predetermined integer) times, passed the test a majority of the times as F<0). Further, in the same field of endeavor, Ichikawa disclose a FM receiver, for automatically selecting a valid channel comprising incrementing a count when the FM signal is in the AFC window (column 2 lines 11-19, testing a received channel three times, if at least two of three counting operations are in the AFC window (column 1 lines 65-68), it is then judged that the broadcasting signal is present). Both Tanaka et al. and Ichikawa, especially Ichikawa in the field of FM radio, disclosed to test the received wireless signal a predetermined number of times, and if the receiving signal passes a criterion a majority times of the predetermined number of times, then the received signal is considered valid, therefore the disclosures of Tanaka et al. and Ichikawa are enough to motivate one of ordinary skilled in the art to test the FM signal in the criteria circuit of figure 3 of Kennedy et al. the predetermined number of times.

Applicant respectfully traverses the § 112(1) rejection because the claims are fully supported by Applicant's disclosure. Applicant submits that support for aspects of claim 1 directed to scanning the receiver frequency band until a FM signal is received that has a signal strength greater than a FM threshold and that is in an automatic frequency control (AFC) window associated with a valid FM station can be found, for example in paragraph 0006 of Applicant's specification. Specifically, paragraph 0006 discusses applying two conditions (signal strength and AFC status) to decide whether a received signal is a valid FM station. Applicant notes that support for the above discussed aspects can also be found in the first iteration shown and discussed by Applicant's Figure and paragraph 0013. Accordingly, the § 112(1) rejection is improper and Applicant requests that it be withdrawn.

The Examiner respectfully submits that paragraph 6 of present application does support the limitation in argument, thus 112(1) rejection is withdrawn. However the disclosure of paragraph 6 is indicated by applicant as known in the art, therefore paragraph 6 is Background of the Invention or Prior Art of the Invention which can be used to against the present invention.

Applicant respectfully traverses the § 112(2) rejection of claim 3 because the Examiner improperly equates breadth with indefiniteness. See, e.g., M.P.E.P. § 2173.04 ("Breadth of a claim is not to be equated with indefiniteness."). In this instance, the Examiner asserts that "a number of times" should be limited to 2 or more. Thus, the Examiner appears to be improperly attempting to argue the scope of the claims under the guise of indefiniteness. Accordingly, the § 112(2) rejection of claim 3 is improper and Applicant requests that it be withdrawn. Applicant further notes that the rejection should have been in the form of a non-final Office Action because the Examiner has improperly presented new grounds of rejection (e.g., the § 112(2) rejection of claim 3) for the first time as a final rejection because aspects of claim 3 directed to counting means for registering a number of times were present in claim 3 prior to the amendment filed on April 7, 2009. See, e.g., M.P.E.P. § 706.07(a).

The Examiner respectfully submits that Claim 3 recites "counting means for registering, within an interval immediately after receiving said FM signal, a number of times within a predetermined number of times that said FM signal meets both of the criteria", according to the specification paragraph 0013 and the sole figure, in result, counting means may have registered 0 or 1 count that said FM signal meets both of the criteria, it is clear that 0 or 1 count is not in line with "a number of times", thus the limitation is uncertain that is an indefiniteness issue. The limitation has been amended as "a number of times within a predetermined number of times", thus making the rejection final is proper.